

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NABIL FARAG,

Petitioner,

CASE NO. C12-5865 BHS

ORDER DISMISSING PETITION

STATE OF WASHINGTON,

Respondent.

This matter comes before the Court on Petitioner Nabil Farag’s (“Farag”) responses to the Court’s order to show cause (Dkt. 4).

On September 27, 2012, Farag filed a petition for writ of habeas corpus apparently contesting state court convictions from a case that was filed in 2006. Dkt. 1.

A petitioner must be in custody in order to challenge his detention. *See* 28 U.S.C. § 2254(a). Because custody is a statutory jurisdictional prerequisite, a district court may only consider a habeas petition if the petitioner was in custody at the time of filing the petition. *See Maleng v. Cook*, 490 U.S. 488, 490–91 (1989) (per curiam); *Bailey v. Hill*, 599 F.3d 976, 978–79 (9th Cir. 2010). As with other jurisdictional prerequisites, the

1 court must raise the issue of custody *sua sponte*. *See Tyars v. Finner*, 709 F.2d 1274,
2 1279 (9th Cir. 1983) (addressing issue of custody even though respondent did not raise
3 issue).

4 In this case, Farag does not appear to be in custody because his mailing address is
5 not a state correctional institution. On December 3, 2012, the Court ordered Farag to
6 show cause on the issue of custody. Dkt. 4. Farag filed four responses. Dkts. 6–9. The
7 Court has reviewed the responses and finds that Farag has failed to show that he is in
8 custody of the state. Therefore, the Court **DISMISSES** his petition. The Clerk shall
9 close this case.

10 **IT IS SO ORDERED.**

11 Dated this 24th day of January, 2013.

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BENJAMIN H. SETTLE
United States District Judge